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FILED

OCT 17 2014

Clerk, U S District Court
District Of Montana
Billings

FILED THIS 15th DAY
OF SEPTEMBER 20¹⁴

AT 8:30 O'CLOCK A. M.
RUTH L. BAKER

Clerk of The District Court

By

Rosemary Olson
DEPUTY CLERK

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, TREASURE COUNTY

* * * * *

SAMUEL STALEY,

Plaintiff,

v.

BURLINGTON NORTHERN
SANTE FE RAILWAY CO. and
LYNN LUDWIG,

Defendants.

Cause No.

DV-2014-08

Judge:

GEORGE W. HUSS

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

* * * * *

For his claims against Defendants, Plaintiff states and alleges as follows:

PARTIES

1. Plaintiff, Samuel Staley, is and was at all times material herein a citizen of the State of Montana, residing in Treasure County, Montana.

2. Defendant, Burlington Northern Santa Fe Railway Co. (BNSF) is and was at all times material herein a foreign corporation owning and operating a railroad line within the State of Montana, including Treasure County, Montana.

3. Defendant, Lynn Ludwig, is and was at all times material herein a resident and citizen of the State of Montana, employed by Defendant BNSF as the railroad official designated to be the "point of contact for any issues" involving the BNSF railroad crossings in Hysham, Treasure County, Montana.

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COUNT I

4. Plaintiff restates and realleges each and every fact and allegation stated in ¶¶ 1-3.

5. Defendant BNSF owns and operates a railroad line running in a general east/west direction through the town of Hysham, Treasure County, Montana, consisting of a south mainline track which parallels a north siding track.

6. There are only two railroad crossings owned and operated by BNSF in the town of Hysham allowing motorists, including heavy trucks during the beet harvest, to cross the BNSF tracks to get from the north side of Hysham to the south.

7. The "west" BNSF crossing is protected, guarded and controlled by automatic warning gates and lights, whereas the other BNSF crossing located approximately one-quarter mile to the "east" is equipped only with crossbuck signs.

8. In September 2012, Defendant, Lynn Ludwig, was appointed and designated by BNSF to be the "point of contact for any issues in Hysham" concerning BNSF's railroad crossings over its railroad tracks running through Hysham.

9. For a least a year prior to the date of the subject accident on October 13, 2013, Hysham town officials had complained to BNSF officials, including Defendant Ludwig, that BNSF trains were being parked and left standing unoccupied for extended periods of time on the north siding track completely blocking the "west" protected and controlled crossing, making it completely unusable, thereby forcing motorists, including truckers, to use the unprotected "east" crossing.

10. The BNSF trains which were routinely parked and left standing unoccupied on the north siding track also obscured and blocked the view of any approaching eastbound trains on the south mainline track for southbound motorists at the "east" crossing.

11. Despite these safety complaints to Defendants BNSF and Ludwig by Hysham town officials, Defendants failed and refused to take adequate safety measures to answer the complaints which were "arrogantly ignored" by Defendants.

12. On the morning of October 13, 2013, Plaintiff Samuel Staley was operating a beet

1 truck from the north side of BNSF's railroad tracks running through Hysham with the intent of
2 crossing the tracks to get to the south side.

3 13. In spite of previous safety complaints, there was a BNSF train parked and left
4 standing unoccupied on the north siding track completely blocking the "west" protected crossing,
5 forcing Plaintiff to travel east on the frontage road paralleling BNSF's tracks and use the "east"
6 unprotected crossing.

7 14. As Plaintiff turned south off of the frontage road and started across the "east"
8 unprotected crossing, his view of an approaching eastbound train on BNSF's south mainline
9 track was obscured and obstructed by the BNSF train parked on the north siding track.

10 15. The oncoming eastbound train collided with the passenger side of the truck,
11 causing Plaintiff to suffer severe personal injuries and damages.

12 16. The subject collision and Plaintiff's resulting personal injuries and damages were
13 directly, proximately and substantially caused by Defendants', BNSF's and Ludwig's, negligence
14 in repeatedly blocking and obstructing the protected "west" crossing with parked, unoccupied
15 trains, making it unusable to motorists; in thereby forcing motorists, including truck drivers
16 during beet harvest, to utilize the unprotected "east" crossing; in thereby obstructing and
17 obscuring the view of oncoming eastbound trains for southbound motorists at the unprotected
18 "east" crossing; in arrogantly ignoring the complaints about these unsafe practices at the
19 crossings in Hysham; in failing to properly sound an audible warning for the east crossing in
20 violation of Montana state and federal law and regulations; in failing to operate the train at a
21 reasonably safe speed in approaching the obstructed and unprotected east crossing, which, under
22 the circumstances, constituted a unique, specific and individual hazard; in failing to keep a
23 proper lookout for vehicles approaching the "east" unprotected crossing; in failing to install
24 proper warning signs and signalization at the unprotected "east" crossing; and in otherwise
25 failing to use due care under the circumstances.

26 17. As a direct, proximate and substantial cause of Defendants' negligence and failure
27 to use due care, Plaintiff suffered severe personal injuries for which he is entitled to recover all
28

1 damages under Montana law.

2 **COUNT II**

3 18. Plaintiff restates and realleges each and every fact and allegation stated in ¶¶ 1-17.

4 19. Defendants arrogantly ignored the known unsafe condition of and unsafe practices
5 at BNSF's crossings in Hysham and are, therefore, subject to punitive damages, pursuant to §§
6 27-1-220 and 27-1-221, MCA.

7 **RELIEF**


8 20. Plaintiff restates and realleges each and every fact and allegation stated in ¶¶ 1-19.

9 21. As a direct, proximate and substantial cause of Defendants' negligence and
10 wrongful misconduct as hereinabove alleged, Plaintiff suffered severe personal injuries for which
11 he is entitled to recover all damages under Montana law, including punitive damages.

12 **WHEREFORE**, Plaintiff prays for judgment against Defendants for all damages to
13 which he is entitled under Montana law, including punitive damages, Plaintiff's costs and
14 disbursements incurred herein, and any further relief which may be justified under the
15 circumstances.

16 DATED this 15th day of September, 2014.

17 HOYT & BLEWETT PLLC

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20 By: 
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25 Attorneys for Plaintiff

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